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6                   UNITED STATES DISTRICT COURT  
7                   WESTERN DISTRICT OF WASHINGTON  
8                   AT SEATTLE

9                   DAWNTE DUANE JACKSON,

10                  Plaintiff,

Case No. C18-0398-RSM

11                  v.

ORDER OF DISMISSAL

12                  UNITED STATES, et al.,

13                  Defendants.

14                  Having reviewed the Report and Recommendation of the Honorable Mary Alice Theiler,  
15 United States Magistrate Judge, any objections or responses to that, and the remaining record, the  
16 Court finds and ORDERS:

17                  (1)     The Court ADOPTS the Report and Recommendation;

18                  (2)     Defendant's motion for summary judgment (Dkt. 16) is GRANTED based on  
19 plaintiff's failure to exhaust his available administrative remedies;

20                  (3)     This action is DISMISSED without prejudice. *Wyatt v. Terhune*, 315 F.3d 1108,  
21 1120 (9th Cir. 2003), *overruled on other grounds by Albino*, 747 F.3d at 1162 (“If the district court  
22 concludes that the prisoner has not exhausted nonjudicial remedies, the proper remedy is dismissal  
23 of the claim without prejudice.”); *Carrea v. California*, 551 Fed. Appx. 368, 369 (9th Cir. 2014)

1 (remanding for the entry of dismissal without prejudice because the proper remedy for non-  
2 exhaustion is dismissal without prejudice); and

3 (4) The Clerk is directed to send copies of this Order to the parties and to Judge Theiler.

4 Dated this 4 day of June 2019.

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8 RICARDO S. MARTINEZ  
9 CHIEF UNITED STATES DISTRICT JUDGE  
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